



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

999 18TH STREET- SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

September 21, 2006

Ref: ENF-L

BY CERTIFIED MAIL;
RETURN RECEIPT REQUESTED

Mr. Dennis R. Lawrence
Registered Agent for Service of Process
High Plains Resources, Inc.
100 East Hart Street
Buffalo, Wyoming 82834

Re: High Plains Resources, Inc., Commercial Oilfield Waste Disposal Facility
Administrative Order Pursuant to Section 7003 of RCRA

Dear Mr. Lawrence:

You are listed as the registered agent for service of process for High Plains Resources, Inc. in Wyoming. Enclosed please find a copy of the administrative order we are issuing today to High Plains Resources. The order is issued under the authority of Section 7003 of the Solid Waste Disposal Act, as amended (commonly referred to as the Resource Conservation and Recovery Act, or "RCRA"), 42 U.S.C. § 7003. The order requires that High Plains Resources quickly take steps to repair existing netting at the two skim pits at its Parkman Reservoir facility in Johnson County, Wyoming, and also quickly develop and implement a work plan to address threats to health and the environment (particularly wildlife) primarily at the evaporation pond at the facility. The order also requires that the facility hereafter be maintained and operated in a manner that is protective of human health and the environment.

As detailed in the order, we have determined that conditions at the facility once again pose an imminent threat to wildlife, particularly your mismanagement of oily waste in the evaporation pond and the condition of the netting for the skim pits. As you are aware, during our most recent inspection we found significant numbers of wildlife deaths that quite obviously occurred as a direct result of contact with a large amount of oil now on the evaporation pond. Based on the fact that no effective work to repair and replace the netting and no effective work to reduce the hazards from the oil on the evaporation pit was conducted between the August and September inspections, we have now concluded that we have no option but to issue an order to High Plains to ensure that the threats are addressed as quickly as possible.

We recommend that High Plains Resources pay particular attention to the following sections of the order: section VII Work to be Performed; section XVII Opportunity to Confer; XVIII Notice of Intent to Comply; and section XXI Effective Date. Each of these sections provides details on certain time critical elements of the order.

If High Plains Resources has any questions or would like to set up the offered conference, please feel free to call Randy Lamdin at (303) 312-6350, within the time frames set forth in the letter.

Sincerely,

SIGNED

David J. Janik
Supervisory Enforcement Attorney

SIGNED

Sharon Kercher, Director
Technical Enforcement Program

Enclosure (order)

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION 8**

Docket No. **RCRA-08-2006-0004**

IN THE MATTER OF:

High Plains Resources, Inc.
Post Office Box 370
Buffalo, Wyoming 82834

Respondent.

**ADMINISTRATIVE ORDER
PURSUANT TO
SECTION 7003 OF RCRA**

I. JURISDICTION

The United States Environmental Protection Agency Region 8 (EPA) issues this order pursuant to its authority in section 7003 of the Solid Waste Disposal Act (commonly referred to as the Resource Conservation and Recovery Act, or RCRA), as amended, 42 U.S.C. § 6901 *et seq.* (the Act), 42 U.S.C. § 6973.

II. INTRODUCTION

- A. High Plains Resources, Inc. (Respondent) is a “person” within the meaning of section 1004(15) of the Act, 42 U.S.C. § 6903(15).
- B. Respondent has handled “solid waste” within the meaning of section 1004(27) of the Act, 42 U.S.C. § 6903(27) at a commercial oil field disposal facility known as Parkman Reservoir, located in Section 31, Township 46 North, Range 76 West, in Johnson County, Wyoming (Facility).
- C. Based upon evidence received, EPA has determined that Respondent’s handling of solid waste at the Facility may present an imminent and substantial endangerment to health or the environment within the meaning of section 7003 of the Act, 42 U.S.C. § 6973 (section 7003).
- D. Pursuant to section 7003(a) of the Act, EPA notified Mr. John Wagner, Director of the Water Quality Division, Wyoming Department of Environmental Quality (WDEQ) of this action on September 21, 2006. Pursuant to section 7003(b) of the Act, EPA notified Dr. Mark Scheuler, Johnson County Public Health Officer, of this action on September 21, 2006.
- E. Documents comprising the administrative record for this order (Order) are referred to as “2006AR-#”. An index to the administrative record is provided as Attachment 1 to this Order.

- F. EPA takes this action pursuant to section 7003 having determined that the issuance of this Order is necessary to protect human health or the environment.

III. PARTIES BOUND

- A. This Order shall apply to and be binding upon Respondent, its employees, agents, successors and assigns.
- B. Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Order within two (2) calendar days of the date of Respondent's receipt of this order or date of retention, and shall condition all such contracts on compliance with the terms of this Order.
- C. Respondent shall give notice to EPA thirty (30) or more days prior to transfer of ownership or operation of the Facility.

IV. FINDINGS OF FACT

- A. By letter dated May 29, 2002 (2006AR-23), EPA issued an administrative order to Respondent regarding management of the same type of solid wastes at the same Facility that this Order addresses (2002 Order). 2006AR-24.
- B. The primary threat to health and the environment the 2002 Order was designed to address was the presence of large volumes of oil in two pits, commonly referred to as the "skim" pits, and the lack of any means to prevent contact by wildlife with the oil. Bird and other wildlife deaths because of contact with the oil on these skim pits was documented. (*See*, documents in the administrative record for the 2002 Order generally. Documents comprising the administrative record for the 2002 Order are also made a part of the administrative record for this Order and are numbered 2006AR-1 through 2006AR-22.)
- C. The findings of fact in the 2002 Order are incorporated herein by reference. The findings provide detail regarding, among other things, the Facility location, a description of Facility operations and units, a description of numerous grassland and other species of migratory birds inhabiting or regularly migrating through the area in which the Facility is located, the authorization to operate from WDEQ, and the history of the efforts by WDEQ, EPA and the United States Fish and Wildlife Service (USFWS) to have Respondent change its solid waste management practices at the Facility.
- D. EPA issued the 2002 Order because it had determined that:
 - 1. Respondent's management of oily wastes at the Facility presented an imminent and substantial endangerment to health or the environment (primarily wildlife);

2. Such an order was necessary because WDEQ and the USFWS had spent the prior three years working with Respondent to ensure it changed its solid waste management practices; and
 3. Despite repeated assurances to the contrary, Respondent had not taken any concrete actions to abate the threat of slow and painful death to wildlife which come into contact with the oily wastes. 2006AR-1 through 24.
- E. The 2002 Order required Respondent to submit a workplan providing details on the corrective measures Respondent would implement to continuously and permanently protect wildlife and which would include, among other things, an operation and maintenance plan to ensure uninterrupted effectiveness of the chosen measures.
- F. By letter dated September 3, 2002, EPA approved Respondent's workplan. 2006AR-28.
- G. The approved workplan (2002 workplan (2006AR-27)) required Respondent to install and maintain a properly engineered netting system around and over the two skim pits.
- H. On August 26, 2003, EPA inspected the Facility and determined that Respondent had completed construction activities required under the approved workplan. *See*, Inspection Report dated September 12, 2003. 2006AR-31
- I. By letter dated September 18, 2003, EPA informed Respondent that it had observed Respondent's compliance with the 2002 workplan requirements; that EPA was releasing Respondent from the obligation under the 2002 Order to submit a Corrective Measures Summary Report; and that the 2002 Order was terminated. 2006AR-32
- J. The September 18, 2003, letter reminded Respondent of its "continuing obligation to prevent access by wildlife to oil on the surface of the skim pits, or any other surface at the Facility". 2006AR-32, p.1
- K. On August 16, 2006, EPA, USFWS and WDEQ conducted an inspection of the Facility (August 2006 inspection). During the August 2006 inspection the inspectors observed that:
1. the netting was completely off the east skim pit;
 2. the netting on the west skim pit was in need of maintenance and repair;
 3. both skim pits were 100% covered with a layer of oil (as expected because that is their function), had oil-stained banks, and approximately six (6) feet of freeboard;
 4. liquid from the east skim pit was moving out of the skim pit by pipe which drained to an open ditch which empties into an evaporation pond;
 5. a pipe also runs from the west skim pit to an open ditch that empties into the evaporation pond, but no liquid was flowing at the time of the inspection;
 6. the liquid from the east skim pit contained a high degree of oil;
 7. the dirt in the open ditch conveying waste from the east skim pit was visibly stained

- with oil;
- 8. the open ditch from the west skim pit was not as stained as the ditch from the east skim pit;
- 9. virtually all of the evaporation pond was covered with a layer of oily waste;
- 10. liquid in the portion of the evaporation pond not covered with oil had oily waste suspended in the liquid (particularly visible as an oily sheen); and
- 11. one oiled dead rabbit was visible in the evaporation pond.

See, inspection/trip report dated September 18, 2006 (2006AR-38)

- L. On August 16, 2006, immediately after the inspection, the inspectors met with a representative of Respondent, Mr. Dennis Lawrence. The inspectors advised shutting the valve to the pipe receiving water from the east skim pit and to begin remediation of the evaporation pond immediately. Mr. Lawrence stated he'd begin such work immediately. 2006AR-34.
- M. USFWS wrote a letter dated September 11, 2006, detailing some of the observations made during the August 2006 inspection, explaining the requirements of the Migratory Bird Treaty Act, particularly with regard to the "taking" of protected species, and offering technical assistance in the development of methods to abate threats to wildlife. 2006AR-36
- N. On September 14, 2006, EPA and USFWS conducted an inspection of the Facility (September 2006 inspection). During the September 2006 inspection the inspectors observed that:
 - 1. the netting remained off of the east skim pit;
 - 2. the netting on the west skim pit had not been repaired;
 - 3. the liquids were no longer flowing from the east skim pit to the open ditch and evaporation pond; and
 - 4. no work had begun to address the threats posed by the stained soil in the open ditches and the oily surfaces/shoreline of the evaporation pond.
- O. During the September 2006 inspection the inspectors also observed and photographed:
 - 1. eight (8) oiled and dead rabbits;
 - 2. two (2) oiled and still living rabbits;
 - 3. one (1) oiled and dead bird;
 - 4. six (6) oiled and still live migratory birds; and
 - 5. predator (e.g., coyote) tracks in the oily shoreline of the evaporation pond.

(*See*, 2006AR-36 and 39. 2006AR-36 includes prints of certain photographs documenting the observations made during the September 2006 inspection. A "CD-R" disc containing electronic copies of each photograph and video clip taken during the September inspection is included as 2006AR-40.)

- P. As evidenced by the presence of a number of migratory species during the September 2006 inspection (American coot, blue-winged teal and grebe), the fall migration through the area in which the Facility is located has already begun. *See*, 2006AR-36, 39 and 40.

V. CONCLUSIONS OF LAW

- A. Respondent is a "person" within the meaning of section 1004(15) of the Act, 42 U.S.C. § 6903(15).
- B. Wastes received by, and handled at, the Facility are "solid waste[s]" as defined in Section 1004(27) of the Act, 42 U.S.C. § 6903(27).
- C. Respondent has contributed and/or is contributing to the handling, storage, treatment, transportation or disposal of solid waste at the Facility within the meaning of Section 7003 of the Act, 42 U.S.C. § 6973.
- D. Respondent's handling of solid waste at the Facility may present an imminent and substantial endangerment to health or the environment within the meaning of Section 7003 of the Act.

VI. ORDER

Based on the above, and on other information contained in the administrative record for this Order, EPA has determined that the activities required by this Order are necessary to protect health or the environment. EPA, therefore, hereby orders Respondent to perform the work specified in this Order in the manner and by the dates specified herein. All work undertaken pursuant to this Order shall be performed in a manner consistent with this Order, including all documents incorporated herein pursuant to this Order, and all applicable laws.

VII. WORK TO BE PERFORMED

A. CORRECTIVE MEASURES

1. Because the fall bird migration is already underway, and because Respondent has been fully aware of its continuing obligation to operate the Facility in a protective manner, Respondent shall complete all work to repair and maintain the measures described in the 2002 workplan (2006AR-27) no later than seven (7) calendar days from the date of receipt of this Order and the remainder of the work required hereunder no later than October 16, 2006, notwithstanding any potential application of the timeframes for submittals, responses, and other work set forth immediately below.
2. Within three (3) calendar days of receipt of this Order Respondent shall inform EPA, WDEQ, and the USFWS orally and in writing, whether by facsimile or placement of a letter using certified mail, of the initiation of measures to repair the netting at the west skim pit and replace the netting at the east skim pit. Within seven (7) calendar days of receipt of this

order Respondent shall complete necessary repairs to the netting used at the west skim pit, replace the netting at the east skim pit, and complete all other work to ensure adequate protection of wildlife at the skim pits.

3. Within three (3) calendar days of receipt of this Order, Respondent shall evaluate all corrective measures necessary at the remainder of the Facility to protect wildlife, including migratory birds and threatened or endangered species, develop a Corrective Measures Work Plan (CMWP) and submit such CMWP to EPA for approval within seven (7) calendar days of receipt of this Order. The CMWP shall describe:
 - a) the selected corrective measures, including but not limited to the corrective measures described below;
 - b) an operations and maintenance plan which will result in uninterrupted effectiveness of the chosen corrective measures; and
 - c) the names and qualifications of the personnel and contractor(s) to be used in carrying out the work required by this Order. The CMWP shall demonstrate that the personnel and contractor(s) possess all appropriate qualifications.
4. The corrective measures shall include at a minimum, but not be limited to:
 - a) methods for permanently and continuously eliminating contact by wildlife with any oil at or on the surface of the skim pits and evaporation pit, including if appropriate, removal of all oily waste from the evaporation pond, and throughout the Facility;
 - b) remediation of oily evaporation pond shorelines, the open ditches, and other ground surfaces throughout the Facility; and
 - c) clean up and proper disposal of any oil-stained/oil-contaminated soils and other wastes generated at the Facility
5. The CMWP shall specify that the corrective measures shall be immediately implemented upon EPA approval of the CMWP.
6. EPA will notify Respondent in writing of any comments it may have on the CMWP which must be incorporated into the CMWP before it can be approved; or EPA will approve the CMWP as submitted or with EPA comments incorporated into the approved CMWP.
7. If EPA affords Respondent an opportunity to incorporate EPA's comments, Respondent shall incorporate EPA's comments into the CMWP and resubmit the CMWP to EPA within two (2) calendar days of receipt of EPA's comments.

8. Upon receipt of the CMWP with EPA comments incorporated, EPA will notify Respondent in writing of its approval, approval with modifications or disapproval of the CMWP. If approved with modifications, the EPA notification correspondence shall serve as an addendum to the final CMWP and shall be considered part of the approved CMWP.
9. Upon receipt of EPA's written approval or approval with modifications, Respondent shall implement the corrective measures in accordance with the procedures and schedules contained in the CMWP as approved by EPA.
10. If EPA concludes it must disapprove the CMWP after Respondent has had the opportunity to incorporate EPA's comments, EPA may choose to draft a CMWP which EPA will transmit to Respondent as the approved CMWP. EPA may also choose to request that a court order Respondent to take action as is necessary to protect health or the environment at the Facility.
11. Within fifteen (15) calendar days of completing the work as set forth in the CMWP as approved by EPA, Respondent shall provide a written Corrective Measures Summary Report ("CMSR") to EPA detailing the completion of the activities conducted pursuant to the CMWP, including confirmation through photographic evidence. The CMSR, with photographs, shall demonstrate the adequate installation, coverage and integrity of the corrective measures implemented including repair and maintenance of the existing measures.
12. EPA shall notify Respondent as soon as possible after receipt of the CMSR whether the CMSR is accepted and all work, except ongoing operations and maintenance work, is completed under this Order.

B. EMERGENCY ACTION

1. In the event Respondent identifies a threat to human health or the environment at the Facility at any time during implementation of this Order, including during the operation and maintenance period, which warrants more immediate action than pursuant to any requirement of this Order, Respondent shall orally notify the EPA Project Manager identified below not more than twenty-four (24) hours after discovery and notify EPA, FWS, and WDEQ in writing not more than five (5) days after such discovery, summarizing the nature, immediacy and magnitude of such threat(s). Threats to the environment shall include, but not be limited to, the discovery of any mortality of, or injury to any wildlife, and in particular to any animal subject to the Endangered Species Act or the Migratory Bird Treaty Act at the Facility.
2. Proper notification as required in this Order, does not relieve Respondent of any other notification responsibility Respondent may have under any other law, including, but not limited to, Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Section 304 of the Emergency Planning and Community Right to Know Act, and the Migratory Bird Treaty Act.

3. If EPA determines that immediate action is required, the EPA Project Manager may orally authorize and require Respondent to take actions to abate the threat(s).
4. If EPA, FWS, or WDEQ identifies such a threat at the Facility at any time during implementation of this Order, EPA will notify Respondent orally and provide subsequent notification in writing. If EPA determines that immediate action is required, the EPA Project Manager may orally authorize and require Respondent to take actions to abate the threat.
5. Any oral requirements made pursuant to this subsection shall be immediately incorporated into this Order by reference and are immediately enforceable, unless EPA does not provide to Respondent in writing, a description of such requirements within five (5) calendar days of oral notification.

C. ADDITIONAL WORK

If EPA determines that additional work is necessary, EPA will inform Respondent of such additional requirements in writing, including a written justification for requiring the specified additional work and Respondent shall conduct such work according to EPA direction.

D. PUBLIC PARTICIPATION

1. Because the fall migration has begun and the threat of mortality to wildlife is extremely high, EPA does not anticipate making the workplan required in section VII.A. available for public review prior to approval.
2. Unless exigent circumstances exist at the time, EPA may make any other work plan or other document available to the public for review and comment for an appropriate period prior to taking final action on such document.

E. REPORTING

1. Commencing the first full month after the effective date of this Order, Respondent shall provide EPA, FWS, and WDEQ with monthly progress reports which shall include, at a minimum, the following information:
 - a) activities conducted at the Facility in the previous month;
 - b) summaries of problems encountered during the previous month and how the problems were or are being addressed;
 - c) changes in work performed at the Facility from that projected in the previous monthly progress report; and
 - d) projected work for the next reporting period.
2. These progress reports are to be submitted by the tenth calendar day of the month following

the monthly reporting period.

3. The reporting requirement in VII.E.1. becomes a quarterly reporting requirement after EPA's acceptance of the CMSR. The first quarterly report will be due on the tenth day of the first January, April, July, or October after the CMSR is accepted.

VIII. CERTIFICATION

- A. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Order which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Order shall be certified by a duly authorized representative of Respondent. A person is a "duly authorized representative" only if: (a) the authorization is made in writing; (b) the authorization specifies either an individual or position having responsibility for overall operation of the Facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and (c) the written authorization is submitted to the EPA Project Manager designated below.
- B. The certification shall be in the following form:

I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete. As to [the/those identified portion(s)] of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature :

Name :

Title :

IX. ACCESS

Respondent shall permit full access to EPA, FWS, WDEQ, and Johnson County, and their authorized representatives or agents, as may be necessary for the purposes of oversight of and implementation of this Order.

X. GENERAL PROVISIONS

- A. All plans and documents submitted under any section of this Order shall, upon approval by EPA, be incorporated by reference into this Order as if set forth fully herein.
- B. Respondent shall obtain any permits or approvals which are necessary to perform work on or outside the Facility under applicable law and shall submit timely applications and requests for any such permits and approvals.
- C. Respondent shall employ sound scientific, engineering, and construction practices and principles under this Order.

XI. AVAILABILITY AND RETENTION OF INFORMATION

- A. Respondent shall make available to EPA, and shall retain, during the pendency of this Order and for a period of five (5) years after its termination, all records and documents in its possession, custody, or control, or in the possession, custody or control of their contractors and subcontractors, which relate to the performance of this Order, including but not limited to documents reflecting the results of any sampling, tests, or other data or information generated or acquired by Respondent, or on Respondent's behalf, with respect to the implementation of this Order.
- B. After the document retention period, Respondent shall notify EPA at least ninety (90) calendar days prior to the destruction of any such documents and, upon request by EPA, shall deliver the documents to EPA.

XII. CONFIDENTIALITY CLAIMS

Respondent may assert confidentiality claims pursuant to 40 C.F.R. Part 2. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted to the EPA, the public may be given access to such information without further notice to Respondent.

XIII. AVAILABILITY OF ADMINISTRATIVE RECORD

The administrative record supporting this Order shall be available for public review at the RCRA File Room, EPA Region 8, 999 18th Street, Denver, Colorado from 8 a.m. to 5 p.m., every Federal business day.

XIV. NOTICES, CONTACTS, AND EPA PROJECT MANAGER

- A. Whenever under the terms of this Order, notice is required to be given, and/or a report or other document is required to be forwarded by one party to another, such correspondence shall be sent by certified mail or hand carried to the following individuals at the addresses specified below. The following EPA person is designated as the Project Manager for EPA

for this Order.

Mr. Randy Lamdin
EPA Region 8, 8ENF-RC
999 18th Street, Suite 300
Denver, Colorado 80202-2466
(303) 312-6350

As to FWS:

Mr. Pedro Ramirez, Jr.
Ecological Services
Wyoming Field Office
U.S. Fish & Wildlife Service
5353 Yellowstone Road, Suite 308A
Cheyenne, Wyoming 82009
(307) 772-2374 ext. 36

As to WDEQ:

Mr. John Wagner, Administrator
Water Quality Division
Department of Environmental Quality
Herschler Building, 4th Floor
122 West 25th Street
Cheyenne, Wyoming 82002
(307) 777-7781

- B. If the date for submission of any item or notification required by this Order falls upon a weekend or state or Federal holiday, the time period for submission of that item or notification is extended to the next Federal working day following the weekend or holiday.

XV. RESERVATION OF RIGHTS

- A. Nothing in this Order shall limit the information gathering, access, and response authority of the United States under any other applicable law, nor shall it limit the authority of EPA to issue additional orders to Respondent as may be necessary.
- B. This Order shall not be construed as a waiver or limitation of any rights, remedies, powers and/or authorities which EPA has under the Act, CERCLA or any other applicable law.
- C. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any applicable laws and regulations and with any of the requirements of this Order, including but not limited to, the right to disapprove of work performed by Respondent, to request that Respondent perform additional tasks, and the right to perform any portion of the work herein.
- D. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligation to comply with the Act and/or any other applicable State, Federal, or other law, regulation, permit, or other requirement.

XVI. FAILURE TO COMPLY

Pursuant to Section 7003(b) of the Act and 40 C.F.R. Part 19, any failure by Respondent to comply with this Order shall subject Respondent to civil penalties of not more than \$6,500.00 for each day of each failure to comply with this Order. See also, Federal Register notice dated February 13, 2004 (69 Fed. Reg. 7121, at 7126).

XVII. OPPORTUNITY TO CONFER, AND MODIFICATION

- A. Respondent has the opportunity to confer informally with EPA concerning the terms and applicability of this Order. If Respondent desires a conference, Respondent must contact EPA's Project Manager by telephone to schedule such a conference within two (2) calendar days of receipt of this Order by Respondent and follow up this request in writing immediately thereafter.
- B. Any conference held is not an evidentiary hearing and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondent's request, Respondent may appear in person or by an attorney or other representative.
- C. If EPA determines that any element of this Order, including work to be performed or schedules, warrants modification after a conference is held, EPA will modify the order in writing, file the modification with the Regional Hearing Clerk and issue a copy to Respondent.
- D. Except as otherwise provided in this Order, no modification to this Order shall be effective unless and until it is issued in writing by EPA and filed with the Regional Hearing Clerk.

XVIII. NOTICE OF INTENT TO COMPLY

- A. Within two (2) days from receipt of this Order, or within twenty-four (24) hours from the end of any conference with EPA pursuant to the above section of the Order, Respondent shall provide written notice to EPA's Project Manager at the address set forth above stating whether Respondent will comply with the terms of this Order. The absence of a response by EPA to the notice required by this paragraph shall not be deemed to be acceptance of any assertions that Respondent may make in its notice, and shall not affect Respondent's obligation to implement this Order.
- B. Failure of Respondent to provide notification to EPA's Project Manager of intent to comply within this time period is a violation of this Order.

XIX. NOTICE OF NON-LIABILITY OF EPA

EPA shall not be deemed a party to any contract involving Respondent and relating to activities at the Facility and shall not be liable for any claim or cause of action arising from or on account of any act, or the omission of Respondent, their employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Order.

XX. SEVERABILITY

If any provision or authority of this Order or the application of this Order to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provision to other parties or circumstances and the remainder of this Order shall not be affected thereby and shall remain in full force.

XXI. EFFECTIVE DATES

- A. This Order shall become effective two (2) days after the date this Order is filed with the Regional Hearing Clerk and mailed to Respondent, unless an informal conference is held. If such a conference is held, this Order becomes effective on the date of receipt by Respondent of EPA's decision on whether to modify the Order.
- B. Subsequent modifications made by EPA to this Order are effective on the date such modification is filed with the Regional Hearing Clerk, so long as Respondent is sent a copy by certified mail or are hand-delivered a copy of the modification as expeditiously as possible after the modification is filed with the Regional Hearing Clerk.

XXII. TERMINATION AND SATISFACTION

The provisions of this Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, the terms of this Order, including ongoing operation and maintenance requirements in any approved workplan, or any additional tasks determined by EPA to be required pursuant to this Order, have been satisfactorily completed. This notice, however, shall not terminate Respondent's continuing obligations hereunder, including, but not limited to: record retention, reservations of rights, other claims, other applicable laws, and notice of non-liability of EPA.

IT IS SO ORDERED:

**ENVIRONMENTAL PROTECTION
AGENCY REGION 8**

Date: **Sept. 21, 2006**

By: **SIGNED**
Sharon L. Kercher, Director
Technical Enforcement Program

Date: **20 September 2006**

By: **SIGNED**
David J. Janik
Supervisory Enforcement Attorney

ATTACHMENT 1

Administrative Record Index¹
to
Administrative Order Pursuant to Section 7003 of RCRA
Issued to High Plains Resources, Inc.
September 2006

- AR2006-1 E-mail from Pedro Ramirez (USFWS) to Randy Lamdin (EPA) dated April 29, 2002.
- AR2006-2 WDEQ Permit to Construct (#83-601) dated December 8, 1983.
- AR2006-3 Memorandum from Larry Robinson (WDEQ) to the file dated May 4, 1983.
- AR2006-4 Letter from Don McKenzie (WDEQ) to Dennis Lawrence (HPR) dated February 13, 1998.
- AR2006-5 Letter from Dennis Lawrence to Don McKenzie dated May 20, 1998.
- AR2006-6 Letter from Don McKenzie to Dennis Lawrence dated May 27, 1998.
- AR2006-7 Don McKenzie telephone logbook entry dated July 7, 1998.
- AR2006-8 Don McKenzie telephone logbook entry dated July 31, 1998.
- AR2006-9 EPA record of communication between Randy Lamdin and Don McKenzie dated April 30, 2002.
- AR2006-10 Inspection report prepared by Science Applications International Corporation dated December 15, 1998.
- AR2006-11 Cover letter and Notice of Violation and Order from Dennis Hemmer and Gary Beach (WDEQ) dated January 22 and 26, 1999, respectively.
- AR2006-12 HPR request for hearing before the Wyoming Environmental Quality Council dated February 10, 1999.

¹ . Documents AR2006-1 through AR2006-22 comprised the administrative record for the order issued by EPA pursuant to section 7003 of RCRA to High Plains Resources, Inc. (HPR) in 2002. The 2002 Order is included in this administrative record as AR2006-24.

- AR2006-13 Cover letter and compliance schedule from Wyoming Assistant Attorney General Magdalene Allely to Timothy Kirven, attorney for HPR dated March 22, 2000.
- AR2006-14 Second mailing of cover letter and compliance schedule dated February 7, 2001.
- AR2006-15 Letter from Magdalene Allely to Timothy Kirven dated April 10, 2001.
- AR2006-16 Letter from Timothy Kirven to Magdalene Allely dated April 16, 2001.
- AR2006-17 E-mail from Pedro Ramirez to EPA (Corbin Darling, Charles Figur, and Randy Lamdin) dated October 4, 2001.
- AR2006-18 E-mail from Magdalene Allely to Pedro Ramirez dated October 25, 2001.
- AR2006-19 EPA inspection/trip report dated December 31, 2001.
- AR2006-20 USFWS inspection report/environmental contaminants field notes dated November 21, 2001.
- AR2006-21 USFWS Region 6 guidance *Oil Field Waste Pits – Death Traps for Wildlife*, dated September 24, 2001.
- AR2006-22 WDEQ guidance *Guidelines (for) Commercial Oilfield Wastewater Disposal Facilities*, dated April 27, 1988.
- AR2006-23 Letter dated May 29, 2002, from EPA to HPR transmitting the first administrative order pursuant to section 7003 of RCRA
- AR2006-24 Administrative order issued by EPA to HPR pursuant to section 7003 of RCRA dated May 29, 2002 (2002 Order).
- AR2006-25 Letter dated July 1, 2002, and undated draft workplan from Timothy Kirven to EPA submitted pursuant to 2002 Order.
- AR2006-26 Letter from EPA to Kirven with comments on undated draft workplan, dated July 12, 2002.
- AR2006-27 Letter transmitting revised workplan dated August 9, 2002, from Timothy Kirven to EPA, dated August 9, 2002.
- AR2006-28 Letter from EPA to HPR approving the revised workplan dated September 3, 2002.

- AR2006-29 EPA report of meeting on September 23, 2002, with HPR dated January 8, 2003.
- AR2006-30 EPA inspection/trip report dated January 9, 2003, for inspection conducted October 17, 2002.
- AR2006-31 EPA inspection/trip report dated September 12, 2003, for inspection conducted August 26, 2003.
- AR2006-32 Letter from EPA to HPR dated September 18, 2003, terminating 2002 Order.
- AR2006-33 EPA inspection/trip report dated January 7, 2005, for inspection conducted August 24, 2004.
- AR2006-34 EPA record of communication dated August 16, 2006.
- AR2006-35 USFWS field inspection report dated August 16, 2006.
- AR2006-36 Letter from Brian Kelly USFWS to HPR dated September 11, 2006.
- AR2006-37 USFWS field inspection report dated September 14, 2006.
- AR2006-38 EPA compliance evaluation report dated September 18, 2006, for inspection conducted on August 16, 2006.
- AR2006-39 EPA compliance evaluation report dated September 19, 2006, for inspection conducted on September 14, 2006.
- AR2006-40 "CD-R" disc containing electronic copy of all photographs and video taken during the September 2006 inspection. Prints of some photographs are included as part of AR2006-37.

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE
ON SEPTEMBER 21, 2006.**

